



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Conservatek Industries, Inc.

**File:** B-254927

**Date:** January 26, 1994

Sherman A. Botts, Esq., Lathrop & Norquist, for the protester.  
John A. Dodds, Esq., and Matthew M. Milhelcic, Esq., Department of the Air Force, for the agency.  
Glenn G. Wolcott, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Where protester's bid bond referenced a project number other than the one for which bids were sought, the agency properly found the bond to be materially defective and properly rejected the protester's bid as nonresponsive.

### DECISION

Conservatek Industries, Inc. protests the Department of the Air Force's rejection of its bid as nonresponsive under invitation for bids (IFB) No. F11623-93-B-0021, for construction of an aluminum dome. The agency's action was based on its determination that the bid bond submitted by Conservatek was materially defective. Conservatek maintains that the discrepancies in its bid bond constituted minor defects which the agency should have waived.

We deny the protest.

### BACKGROUND

Prior to issuing the solicitation, the agency prepared plans and drawings for the construction of two aluminum domes to cover trickle filters at the Scott Air Force Base wastewater treatment facility. Specifically, the drawings, dated April 16, 1993, contained specifications for the construction of one 150 foot diameter dome and one 145 foot diameter dome.

On July 12, the agency issued the IFB, which incorporated by reference the April 16 drawings, and contained the following statement of work: "Furnish all labor, materials and equipment required and necessary to construct a dome over the existing 150' (diameter) primary trickling filter for Project SC 93-2912 . . . in accordance with drawings and specifications." (Emphasis added.) The IFB also contained "Addendum 1" to the April 16 drawings, stating: "Delete all references to the construction of a dome over the existing 145' (diameter) Filter No. 2, Project SC 93-2912A," (Emphasis added.) Thus, at the time the IFB was issued, the agency sought bids for construction of the 150 foot dome, which it identified as project No. SC 93-2912, and expressly excluded any bid for construction of the 145 foot dome, which it identified as project No. SC 93-2912A.

On July 28, the agency issued IFB amendment No. 2.<sup>1</sup> That amendment contained a "Revised Addendum 1" to the April 16 drawings, which stated: "Delete all references to the construction of a dome over the existing 150' (diameter) filter No. 1, Project SC 93-2912." Subsequently, in amendment No. 6,<sup>2</sup> the statement of work was revised to state: "The contractor shall provide all . . . items necessary to construct a dome over the existing 145' (diameter) primary trickling filter for project No. SC 93-2912A . . . ." Thus, as finally amended, the IFB clearly called for bids on only the 145 foot dome (project No. SC 93-2912A), and expressly excluded the 150 foot dome (project No. SC 93-2912) from the procurement.

On or before the September 2 bid opening date, bids were submitted by several offerors, including Conservatek. Upon opening the bids, Conservatek's bid appeared to be low. However, the required bid bond that Conservatek submitted with its bid failed to accurately reflect the appropriate solicitation number; rather, in the block on the face of the bid bond calling for entry of the solicitation number, Conservatek entered "SC 93-29-12", that is, the number for the construction project that had been deleted from the solicitation.

After reviewing Conservatek's bid bond, the agency determined that Conservatek's inaccurate representation of the solicitation number rendered its bid bond materially

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<sup>1</sup>Amendment No. 1 was issued on July 12, and merely changed the date for the site visit.

<sup>2</sup>Amendment Nos. 3, 4 and 5 did not amend either the statement of work or the drawings.

defective.<sup>3</sup> Specifically, the agency concluded that, because the bond referenced the project number of the 150 foot dome which had been deleted from the solicitation, it was not clear that the surety would be bound in the event of default by Conservatek. Accordingly, the agency advised Conservatek on September 10 that it was rejecting the firm's bid. Conservatek subsequently filed this protest.

#### DISCUSSION

The submission of a required bid bond is a material condition of responsiveness with which a bid must comply at the time of bid opening. Grafton McClintock, Inc., B-241581.2, Apr. 17, 1991, 91-1 CPD ¶ 381; Baucom Janitorial Serv., Inc., B-206353, Apr. 19, 1982, 82-1 CPD ¶ 356. When a bid bond is alleged to be defective, the determinative issue is whether the surety has sufficiently manifested an intention to be bound so that the bond would be enforceable by the government in the event of a default by the contractor. Joseph B. Fay Co., B-241769.2, Mar. 1, 1991, 91-1 CPD ¶ 234; J.W. Bateson Co., Inc., B-189848, Dec. 16, 1977, 77-2 CPD ¶ 472. Where there is uncertainty that the bidder has furnished a legally binding bid bond at the time of bid opening, the bond is unacceptable and the bid must be rejected as nonresponsive. A & A Roofing Co., Inc., B-219645, Oct. 25, 1985, 85-2 CPD ¶ 463.

Whether citation of an incorrect solicitation number renders a bid bond unacceptable depends upon the circumstances. Kirila Contractors, Inc., 67 Comp. Gen. 455 (1988), 88-1 CPD ¶ 554. Where there are indicia on the face of the bond that clearly identify the project to which the bond applies, the bond may be acceptable notwithstanding an inaccurate solicitation number. In that case, the incorrect solicitation number is merely a technical defect which does not affect the enforceability of the bond. Id.; Instruments & Controls Serv. Co., B-224293.2, Feb. 17, 1987, 87-1 CPD ¶ 170; Custodial Guidance Sys., Inc., B-192750, Nov. 21, 1978, 78-2 CPD ¶ 355. On the other hand, where there is another ongoing project to which the incorrect solicitation number could refer and, as a result, reasonable doubt exists as to whether the government could enforce the bid bond, an incorrect solicitation number renders the bid bond defective. See, e.g., Fitzgerald & Co., Inc.--Recon.,

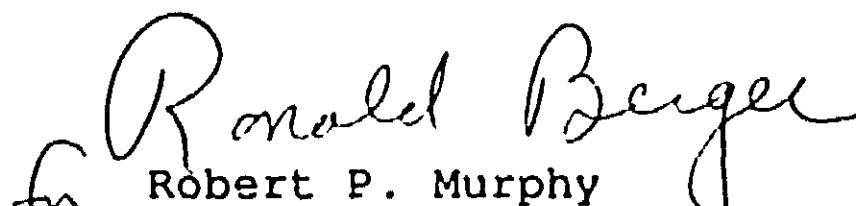
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<sup>3</sup>The agency also found that the bid date on Conservatek's bond had been altered without indication that the surety had agreed to the alteration. Since we find that the agency acted properly in rejecting Conservatek's bid on the basis of the inaccurate solicitation number, we do not discuss the significance of this additional defect.

B-223594.2, Nov. 3, 1986, 86-2 CPD ¶ 510, affirming Kinetic Builders, Inc., B-223594, Sept. 24, 1986, 86-2 CPD ¶ 342.

Here, there were two separate construction projects for which the agency, at different points in the solicitation process, sought bids. As finally amended, the IFB sought bids only for project No. SC 93-2912A; project No. SC 93-2912 was excluded from the procurement. Thus, the reference in Conservatek's bid bond to project No. SC 93-2912--the excluded project--made it unclear to what work the bid bond applied, and created a situation where the surety could disclaim liability in the event Conservatek defaulted. Specifically, Conservatek's error provided the surety with an opportunity to subsequently assert that it was liable only for a default on a bid for project No. SC 93-2912, and not for a default on a bid for project No. SC 93-2912A. Since there was reasonable uncertainty as to whether the surety would be bound by Conservatek's bid bond, the agency properly rejected Conservatek's bid.

The protest is denied.

  
Robert P. Murphy  
Acting General Counsel